
**Labor & Workplace Standards
Committee**

HB 2944

Brief Description: Safeguarding the public safety by protecting railroad workers.

Sponsors: Representatives Chapman, Muri, Gregerson, Stokesbary, McBride, Rodne, Ryu, Young, Kilduff, Harris, Sells, Holy, Peterson, Volz, Valdez, Haler, Stonier, Stambaugh, Fitzgibbon, Walsh, Robinson, Irwin, Blake, Appleton, Bergquist, Ortiz-Self, Stanford, Tarleton, Wylie, Barkis, Goodman, Santos, Ormsby, Pollet and Macri.

Brief Summary of Bill

- Prohibits railroad carriers from disciplining certain employees due to layoff due to illness or injury.
- Requires Class I railroad carriers and certain Class II and III railroad carriers to establish a fatigue layoff program.
- Addresses job protection, leave balances, and other matters for railroad employees under the family and medical leave insurance program.

Hearing Date: 1/30/18

Staff: Joan Elgee (786-7106).

Background:

Sick leave.

The state paid sick leave law applies to employees covered by the state's Minimum Wage Act (MWA). Carriers, such as railroad carriers, subject to certain regulations of the federal Interstate Commerce Act, are exempt from the MWA. Under the federal Railroad Unemployment Insurance Act (RUIA), qualified employees of railroad carriers are eligible for sickness benefits for a qualifying sickness after the fourth consecutive day. The RUIA preempts "sickness benefits" under a state sickness law.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Fatigue management.

The federal Rail Safety Improvement Act of 2008 directed the Federal Railroad Administration (FRA) to adopt rules requiring Class I railroad carriers and certain other carriers to develop a railroad safety risk reduction program, which must include a fatigue management plan. The Rail Safety Advisory Committee of the FRA formed a working group in 2011 to provide advice related to fatigue management plans but did not reach consensus on a recommendation for a rule.

Family and medical leave insurance.

In 2017 a state family and medical leave insurance program (FMLI program) was enacted to provide paid family and medical leave to employees. An employee must work 820 hours in the qualifying period to be eligible for benefits. The FMLI program provides paid family leave of up to 12 weeks to bond after the birth or placement of a child or to care for a family member with a serious health condition. It also provides paid medical leave of up to 12 weeks for an employee's serious health condition, with an additional two weeks if there are pregnancy complications. Paid family leave and medical leave is subject to a combined limit of 16 weeks of leave in a year, plus an additional two weeks if there are pregnancy complications, for a possible total of 18 weeks.

If the leave is for a serious health condition, the employee must provide a document authorizing the health care provider of the employee or family member to provide certification of the serious health condition.

Upon return from leave, under certain conditions an employee is entitled to be restored to the same or an equivalent position. The job protection generally applies to employees who work for an employer with 50 or more employees, have been employed by the current employer for 12 months or more, and have worked for the current employer for at least 1250 hours during the 12 months immediately preceding the start of the leave.

Premiums to support the program will be assessed and collected beginning January 1, 2019, and qualifying employees will be eligible for benefits beginning January 1, 2020. The Employment Security Department (ESD) administers the program.

Other.

The federal Department of Transportation's Surface Transportation Board (STB) is responsible for a variety of aspects of federal railroad regulatory oversight. The STB classifies types of railroads by annual carrier operating revenue:

- Class I - \$448 million or more;
- Class II - \$36 million or more; and
- Class III - less than \$36 million

The state Utilities and Transportation Commission (Commission) administers a railroad safety program and also enforces certain laws relating specifically to railroad employees.

Summary of Bill:

The Safe Leave Act for Washington Railroad Workers (Act) is enacted.

Sick and fatigue leave.

Sick leave - discipline, documentation. A railroad carrier is prohibited from disciplining an employee because of absence due to illness or injury if the employee has completed three consecutive months of continuous employment and the period of absence does not exceed 12 weeks. The carrier may, within 10 days after the employee returns to work, require the employee to provide documentation from a health care provider that the employee was incapable of working due to illness or injury. The employer must make the request for documentation in writing and give the employee at least 30 days to provide the documentation. Employee absences for illness or injury are not subject to any type of carrier availability or attendance policy and are stated to be separate from the family and medical leave insurance program.

Fatigue leave. Class I railroad carriers and Class II and III carriers with regular operating craft working hours extending beyond 16 hours a day more frequently than once a week (exclusive of unforeseen events) must establish a fatigue layoff program (program). The carrier must submit the program to the Utilities and Transportation Commission (Commission) for review and approval within 90 days from the effective date of the Act. Before approving a program, the Commission must submit the program to the leadership of the operating craft rail labor organization state legislative boards. An operating craft employee may layoff due to fatigue without being subjected to discipline or any type of attendance or availability policy.

The Commission must adopt rules to implement the fatigue leave requirements. In adopting rules, the Commission must consider research addressing alertness, depression, and other consequences of irregular, nonscheduled "on-call" working conditions. The Commission must also recognize the importance of ensuring fatigue layoffs are reasonable and legitimate.

A carrier must report data requested by the Commission. If the Commission identifies additional actions to address fatigue that require legislative action, the Commission must report its findings to the appropriate legislative committees.

An operating craft employee is an employee who performs service in an operating craft on a railroad or directs the work of an operating craft employee as a scheduled employee and other employees who perform safety sensitive tasks.

Data. A carrier must provide data to the Commission regarding the number of employees laying off for injury, illness, or fatigue and the length of layoff no later than January 31st of each year for the preceding year. No personal identifying information may be submitted.

Enforcement. Upon complaint by an employee regarding the sick leave and fatigue leave provisions, the Commission must investigate. If the Commission finds a violation, the Commission must issue a notice of infraction and may impose a fine of up to \$500 for the first infraction, up to \$5,000 for a second infraction, and up to \$25,000 for each subsequent infraction committed within three years of a previous infraction. The Commission may also order back pay and reinstatement and may increase the penalties by rule based on changing economic conditions.

Family and medical leave insurance.

In determining the duration of leave time remaining in a year, a carrier may deduct only the actual amount of leave taken by an employee in increments no greater than 24 hours, and may not deduct more than one day for each date the employee specifically applied for leave.

Job protection applies to railroad carrier employees who:

(1) for at least 12 months before the leave, worked on a guaranteed extra call board and worked and were paid for: (a) Not less than 60 percent of the applicable total monthly guarantee, or the equivalent; and (b) Not less than 504 hours (not counting vacation leave and other specified time) for or by that employer; or

(2) for those employees who did not work on a guaranteed extra call board for the 12 months before the leave, worked not less than 504 hours (not counting vacation leave and other specified time) during the preceding 12 months that the employee was actively working for or by that employer.

The "applicable monthly guarantee" is the minimum number of hours for which a carrier has agreed to compensate an employee for a month, other than an employee on reserve status, and for an employee on reserve status, the number of hours for which an employee has agreed to pay the employee as established in the collective bargaining agreement or the employer's policies.

In adopting rules to implement the program, the ESD must adopt rules applicable to carriers that at least address: (1) what constitutes complete and sufficient certification from a medical provider, such that no additional details may be requested; and (2) limits on employer requests for recertification after approval has been granted for that year.

Appropriation: None.

Fiscal Note: Requested on January 29, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.